



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. Charles R. Martin
County Auditor
Harrison County
Marshall, Texas

Dear Sir:

Opinion No. 0-7423

Re: Authority of Commissioners' Court to expend money from the Permanent Improvement Fund for the erection of stack bottoms.

Your letters requesting an opinion of this department set out the following pertinent facts:

The 1946 budget of Harrison County, as to the Permanent Improvement Fund, set up the following proposed expenditures in part as follows:

1. Maintenance, repairs and improvements to the Courthouse and Jail, warehouse, etc., \$6000.00;
2. Improvement, addition to Courthouse and jail, County warehouse, construction, etc., \$12,000.00

A levy order was made as to the Permanent Improvement Fund of five (5¢) cents.

The Commissioners' Court wished to construct stack bottoms in the yard of the county warehouse and pay for the same out of the Permanent Improvement Fund. The primary use of the lumber to be stored on the stack bottoms is that it will be used for the building of bridges, culverts and for general repairs to the county warehouse.

Your question then becomes: Can the Commissioners' Court Expend money from the Permanent Improvement Fund for the erection of stack bottoms to be used for the purpose of storing lumber?

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Section 9, Article VIII, of the State Constitution prescribes the maximum rate of taxes for general purposes, for roads and bridges, for juries and permanent improvements, respectively. These monies arising from taxes levied and collected for each of the enumerated purposes are constitutional funds and the Commissioners' Court has no power to transfer money from one fund to another and to expend for one purpose tax money raised ostensibly for another purpose. (Terrell vs. Williams, 202 S. W. 504; Commissioners' Court of Henderson County vs. Burke, 262 S.W. 94)

Article 2351, Vernon's Civil Statutes, setting forth the power and duties of the Commissioners' Court, reads in part as follows:

"Sec. 7. Provide and keep in repair Courthouses, jails, and all necessary public buildings."

There is no question that it is within the power and duties of the Commissioners' Court to erect, furnish and repair necessary public county buildings and offices, and where a right is thus conferred or obligation imposed, said Court has implied authority to exercise a broad discretion to accomplish the purposes intended. (11 Tex. Juris. 565, Dodson vs. Marshall, 118 S. W. 2d 621)

Taxes levied ostensibly for any specific purpose or class of purposes designated in Sec. 9 of Article VIII must be applied thereto in good faith; and in no event and under no circumstances may there be expended, legally, for one such purpose or class of purposes, tax money in excess of the amount raised by taxation declared for that particular purpose or class of purposes. And further in this connection, the rule is, generally speaking, no expenditure of the funds of the county shall be made except in strict compliance with the budget as adopted by the Court, except for emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonable diligence, thought and attention, have been included in the original budget.

The type of construction contemplated by the Commissioners' Court of Harrison County would be classified permanent improvement. The Commissioners' Court levied and collected taxes for the Permanent Improvement Fund and set funds out in the 1946 budget for proposed expenditures in terms broad enough to include the proposed stack bottoms. The power and duty of the Commissioners' Court to provide and keep in repair courthouses, jails and all necessary public buildings, carries with it the right of acquiring materials for such imposed duties, and the providing of a permanent construction for the

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storing of such materials would be incident to such right. Even though some of the lumber stored on the stack bottoms would be used for road construction, it is our opinion that the Commissioners' Court has the authority to expend money out of the Permanent Improvement Fund for the erection of said stack bottoms.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Jno. C. Knorpp
Assistant

RECEIVED OCT 31 1946

John C. Knorpp
Assistant

JCK:djm

